

**CORPORATIONS COMMITTEE  
BUSINESS LAW SECTION  
THE STATE BAR OF CALIFORNIA  
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[www.calbar.org/2sec/3bus/2busndx.htm](http://www.calbar.org/2sec/3bus/2busndx.htm)**

February 7, 2003

**VIA E-MAIL:** [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Mr. Jonathan G. Katz  
Secretary  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0609

re: SEC File No. S7-52-02  
Release Nos. 33-8170, 34-47069, 35-27627, IC-25872

Dear Mr. Katz:

We are writing to comment on the above-referenced release and proposal (the "**Release**") issued by the Securities and Exchange Commission (the "**Commission**") in connection with Section 403 of the Sarbanes-Oxley Act of 2002 (the "**Act**"). These comments are provided on behalf of the Corporations Committee (the "**Committee**") of the Business Law Section of the California State Bar. Please note that positions set forth in this letter are only those of the Committee. As such, they have not been adopted by either the State Bar's Board of Governors, its overall membership, or the overall membership of the Business Law Section, and are not to be construed as representing the position of the State Bar of California. The Committee is composed of attorneys regularly advising California corporations and out-of-state corporations transacting business in California.

**Membership in the Committee is voluntary and funding for its activities, including all legislative activities, is obtained entirely from voluntary sources. There are currently more than 16,000 members of the Business Law Section.**

California is home to a significant number of issuers and securities counsel. According to one study, California serves as the headquarters for more public companies than any other state, with approximately 16% of all publicly traded corporations being headquartered in California.<sup>[1](#)</sup> Therefore, it is very likely that insiders of California headquartered companies will be disproportionately affected by the rules proposed in the Release.

Currently, Rule 13(a)(3) of Regulation S-T provides that persons can file by direct electronic submission between the hours of 8 a.m. and 10 p.m., Washington D.C. time (5 a.m. and 7 p.m. California time) on weekdays that are not federal holidays. A filing that is accepted before 5:30 p.m. Washington D.C. time (2:30 p.m. California time) is deemed filed on the same day. If a filing is accepted after 5:30 p.m. it will generally be deemed filed on the next business day. The Securities and Exchange Commission has solicited comment on whether Rule 13(a)(3) should be amended to treat an accepted Form 3, 4 or 5 filing in the same manner as a Rule 462(b) filing. Under Rule 462(b), a post-effective amendment or registration statement is deemed filed on the same business day as long as it is received before 10 p.m. Washington D.C. time. (7 p.m. California time).

The Committee believes that persons in California and other western states are at a substantial disadvantage under the current rule. The current rule provides significantly fewer local business hours within which a person in the Pacific Time Zone can timely file a report of beneficial ownership. This disadvantage has become more acute in light of the requirement of the Sarbanes-Oxley Act of 2002 that these reports be generally filed before the end of the second business day following the day on which the subject transaction has been executed.<sup>2</sup> The Committee recommends that California and other western filers be put on an equal footing with filers in the Washington D.C. time zone by amending Rule 13(a)(3) to treat an accepted Form 3, 4 or 5 filing in the same manner as a Rule 462(b) filing for purposes of the deemed filing date.

We hope the foregoing is useful to the Commission and Staff in considering appropriate modifications to the proposed Rules under Section 307 of the Sarbanes-Oxley Act of 2002, prior to adoption of final Rules. Please do not hesitate to contact either of the undersigned if you have any questions on the matters raised herein.

Very truly yours,

*/s/ Keith Paul  
Bishop*

Keith Paul Bishop  
Co-Chair

*/s/ Bruce  
Davis*

Bruce Dravis  
Co-Chair

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<sup>1</sup> Guhan Subramanian, The Influence of Antitakeover Statutes on Incorporation Choice: Evidence on the "Race" Debate and Antitakeover Overreaching *150 U. Pa. L. Rev. 1795, 1816 (2002)*.

<sup>2</sup> Section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), as amended by Section 403 of the Sarbanes-Oxley Act.